Nos. 14-556, 14-562, 14-571 and 14-574

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IN THE

Supreme Court of the United States

JAMES OBERGEFELL, *et al.*
AND BRITTANI HENRY, *et al.*,

Petitioners,

v.

RICHARD HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, *et al.*,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF *AMICI CURIAE* FAMILY EQUALITY COUNCIL, COLAGE, AND KINSEY MORRISON IN SUPPORT OF PETITIONERS, ADDRESSING THE MERITS AND SUPPORTING REVERSAL

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INTEREST OF AMICI CURIAE AND INTRODUCTION[1]

My moms have been as married as they can be for almost 20 years; growing up, I was often the only one of my friends whose parents weren't divorced. I laugh at the thought of a "gay lifestyle," because other than being led by two women, my family is about as traditional as it gets. After I told one woman about my parents, she prefaced her response with, "Well understand, I'm a straight, conservative, Christian, raised in the South."

"Yes, ma'am. So am I."

Kinsey Morrison, 18 years old, Kentucky.[2]

Marriage equality means the world to me. I think it's so wrong that I can't pronounce my love for somebody the same way a straight person does. Some people just don't understand what it's like to listen to the same dismissing things every day.

M.R., 15 years old, Michigan.[3]

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1. Written consent to the filing of this brief has been granted by all parties and filed with the Clerk of the Court. No counsel for a party authored this brief, in whole or in part, and no person other than amici curiae, their members, and their counsel made any monetary contribution to fund the preparation or submission of this brief.

2. Kinsey Morrison, Op-Ed, *A daughter lauds her family, urges marriage equality*, THE COURIER-JOURNAL (Jan. 25, 2015), *available at* http://www.courier-journal.com/story/opinion/contributors/2015/01/08/daughter-lauds-family-urges-marriage-equality/21434869/ (last visited Mar. 4, 2015).

3. Statement of M.R. to Family Equality Council (Feb. 10, 2015). All statements cited in this brief are on file with amicus

Dad, are we a family?

> Four-year-old son to his hospitalized father after hearing staff say his other father could not sign documents because he was "not family."[4]

When this Court considered the Defense of Marriage Act two years ago, amici wrote that the voices of children raised by same-sex parents were too often unheard in debates about same-sex couples and the right to marriage. The Court's decision in *U.S. v. Windsor*, 133 S. Ct. 2675 (2013), helped change that. Increasingly, courts understand that marriage equality is in large part "about the welfare of American children," *Baskin v. Bogan*, 766 F.3d 648, 654 (7th Cir. 2014), and happily, the children of same-sex parents in most of the United States can now enjoy the protection of their parents' legally recognized marriage.

But for children of same-sex parents in Kentucky, Michigan, Ohio, and Tennessee, little has changed. These children are excluded from the protection of laws ostensibly enacted "to secure and preserve the benefits of marriage for our society and for future generations of children." Mich. Const. art. I, § 25. Instead, the marriage exclusions in these states tell the children of same-sex

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Family Equality Council. The children quoted in this brief do not seek anonymity. Initials are used for minors pursuant to the Court's Guidelines for Electronic Submission of Briefs on the Merits (Oct. 1, 2013).

4. "Jeff, Josh, and Andrew," Family Stories, Family Equality Council,http://www.familyequality.org/get_informed/family_stories/ (last visited Mar. 4, 2015).

couples that they are inferior to and less worthy of respect, recognition, and protection than children in other families. Even children who live in states that recognize marriage for same-sex couples are not beyond the reach of these laws. For these families, setting foot in Kentucky, Michigan, Ohio, or Tennessee can suddenly erase a child's legal relationship with his or her parent.

The Sixth Circuit marriage laws also directly harm lesbian, gay, bisexual, and transgender (LGBT) youth in Kentucky, Michigan, Ohio, and Tennessee, officially declaring these young people unworthy to participate in the institution held out as the cornerstone of full participation in social and civic life. The message that individual states are free to treat LGBT youth as second-class citizens reaches beyond the Sixth Circuit states, damaging LGBT youth wherever they live. The profoundly negative impact on these young people's self-esteem, sense of purpose, and well-being threatens to burden them for the rest of their lives.

The voices of LGBT youth and children of same-sex parents help us understand what the issues before the Court mean for real families. No family has ever been strengthened, and no child has ever been made safer or more secure, by denying same-sex couples the right to marry.

Amici curiae are a young woman who was raised by two mothers in Kentucky and organizations dedicated to promoting equality among our country's diverse families (with a special focus on working with the children of

lesbian, gay, bisexual, and transgender parents) and advocating for the interests of LGBT youth. Each of the organizational amici has heard from its constituents that, despite myths to the contrary, their families are typical American families, with the same joys and challenges as other American families. Yet these families must also overcome official governmental opprobrium in the form of laws that stigmatize and de-legitimize their family relationships on a legal, social, and psychological level. Amici curiae offer the stories of children of same-sex couples and of LGBT youth in this brief.[5]

Kinsey Morrison is an 18-year-old freshman at Stanford University. She and her two younger sisters were raised in Goshen, Kentucky, by two moms who have been together for more than 20 years.

Family Equality Council is a community of parents and children, grandparents and grandchildren that reaches across the country, connecting, supporting, and representing LGBT parents and their children. Family Equality Council works extensively with the children of LGBT parents, including through its Outspoken Generation program, which empowers young adults with LGBT parents to speak out about their families, share their own stories and become advocates for family equality. Family Equality Council submits this brief on behalf of all of the young people with whom it has worked.

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5. Some of the statements included in this brief originated in testimony before various public bodies or in published literature. Others are drawn from the personal knowledge of amici and their constituents.

COLAGE is the only national organization for and led by people with a lesbian, gay, bisexual, transgender, or queer parent. COLAGE approaches its work with the understanding that living in a world that discriminates against and treats these families differently can be isolating and challenging for children. COLAGE was founded 25 years ago to support and empower youth in families with lesbian, gay, bisexual, transgender, or queer parents. Based on its direct experience in working with thousands of youth in these families over the past 25 years, COLAGE can attest to the critical importance for children of having their parents' relationships recognized and respected on every level – socially, institutionally, politically, and legally.

SUMMARY OF ARGUMENT

The Court of Appeals for the Sixth Circuit asks us to "[i]magine a society without marriage" and "the problems that might result from an absence of rules about how to handle the natural effects of male-female intercourse: children." Opinion ("Op.") at 19.[6]

Families headed by same-sex parents in Kentucky, Michigan, Ohio, and Tennessee do not have to use their imagination: they live in that society every day.

The proffered governmental interest in "encourag[ing couples] to create and maintain stable relationships within which children may flourish," Op. at 20, cannot apply only to heterosexual couples and their biological children. If

6. References to "Opinion" or "Op." in this brief refer to the decision at issue, published as *DeBoer v. Snyder*, 772 F.3d 388 (6th Cir. 2014).

marriage is premised on "a need to create stable family units for the planned and unplanned creation of children," Op. at 19, that need also extends to children raised by same-sex parents.

Arguments to the contrary treat the children of same-sex parents as, at best, non-existent, and, at worst, unworthy of respect, recognition, and protection. Six million Americans have at least one parent who has identified as lesbian, gay, or bisexual.[7] And because nearly 20% of the 690,000 same-sex couples living in the United States are each raising an average of 1.5 children, there are approximately a quarter of a million children who are currently being raised in same-sex-parented families.[8]

Same-sex couples reside in 93% of all U.S. counties, and every state is home to same-sex parented families.[9]

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7. Gary J. Gates, *LGBT Parenting in the United States*, Williams Institute, UCLA School of Law, at 1 (Feb. 2013), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Parenting.pdf.

8. Gary J. Gates, *LGB Families and Relationships: Analyses of the 2013 National Health Interview Survey*, Williams Institute, UCLA School of Law, at 5 (Oct. 2014), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/lgb-families-nhis-sep-2014.pdf.

9. R. Bradley Sears, Gary J. Gates and William B. Rubenstein, *Same-Sex Couples and Same-Sex Couples Raising Children in the United States: Data from Census 2000*, Williams Institute, UCLA School of Law (2005); *see also* Gary J. Gates and Abigail M. Cooke, *United States Census Snapshot: 2010*, Williams Institute, UCLA School of Law, at 1, 3 (Sept. 2011), *available at* http://williamsinstitute.law.ucla.edu/wpcontent/uploads/ Census2010Snapshot-US-v2.pdf.

These numbers are likely to increase, as growing numbers of LGBT people – more than one-third of lesbians and 57% of gay men – aspire to become parents.[10]

Children come to same-sex parents in different ways: some are born to same-sex parents through assisted reproduction or surrogacy; some are raised by a biological parent and his or her same-sex partner, often following the dissolution of the biological parent's different-sex relationship; and some are adopted jointly by same-sex parents. However these children came into their parents' lives, the availability of "rules" about how society will "handle" them is no less important because their parents are of the same sex.

The question before the Court is not what kinds of families are best. The belief some hold that the best childrearing is performed by different-sex, biological, married parents is beside the point. More than 18,000 children in Kentucky, Michigan, Ohio, and Tennessee are being raised by same-sex parents.[11] The question is

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10. Gary J. Gates, *et al.*, *Adoption and Foster Care by Gay and Lesbian Parents in the United States*, Williams Institute, UCLA School of Law and The Urban Institute, Washington, DC, at 5 (Mar. 2007), *available at* http://williamsinstitute. law.ucla. edu/wp-content/uploads/Gates-Badgett-Macomber-Chambers-Final-Adoption-Report-Mar-2007.pdf.

11. *See* Gary J. Gates, *Same-sex Couples in Kentucky: A demographic summary*, Williams Institute, UCLA School of Law, at 1 (Jun. 2014), *available at* http://williamsinstitute. law.ucla. edu/wp-content/uploads/KY-same-sex-couples-demo-june-2014. pdf ("Nearly one in four same-sex couples in Kentucky (23%) are raising children under age 18 in their homes. 1,623 same-sex-couple households in the state are raising 2,270 children."); Gary J.

whether there is a legal basis for depriving these children of the protections and security that the Sixth Circuit and Respondents offer as the very reason marriage exists.

The marriage restrictions at issue in this case also harm another group of young people in this country: LGBT youth. The marriage restrictions tell these young people that their sexual orientation renders them unfit to participate in what Respondents call "a foundational institution"[12] and "'the fundamental building block of our society.'"[13] The denial of marriage rights forces LGBT

Gates, *Same-sex Couples in Michigan: A demographic summary*, Williams Institute, UCLA School of Law, at 1 (Jun. 2014), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/MI-same-sex-couples-demo-june-2014.pdf ("[O]n average, same-sex couples in Michigan with children have two children under age 18 in the home, indicating that there are approximately 5,300 children in the state being raised by same sex couples."); Gary J. Gates, *Same-sex Couples in Ohio: A demographic summary*, Williams Institute, UCLA School of Law, at 1 (Apr. 2014), *available at* http://williamsinstitute. law.ucla.edu/wp-content/uploads/OH-same-sex-couples-demo-apr-2014.pdf ("Nearly one in five same-sex couples in Ohio (19%) re raising children under age 18 in their homes. More than 3,760 same-sex-couple households in [Ohio] are raising nearly 6,800 children."); Gary J. Gates, *Same-sex Couples in Tennessee: A demographic summary*, Williams Institute, UCLA School of Law, at 1 (Jun. 2014), *available at* http://williamsinstitute.law.ucla.edu/wp-content/uploads/TN-same-sex-couples-demo-june-2014.pdf ("Nearly one in five same-sex couples in Tennessee (18%) are raising children under age 18 in their homes. 1,949 same-sex couple households in the state are raising 3,936 children.").

12. Brief for Michigan Defendants-Appellants, *DeBoer v. Snyder* (6th Cir. Case No. 14-1341), Doc. 46 (filed May 7, 2014), at 54.

13. Brief of Defendants-Appellants, *Tanco v. Haslem* (6th Cir. Case No. 14-5297), Doc. 32 (filed May 7, 2014), at 25 (*quoting* Tenn. Code Ann. § 36-3-113(a)).

youth to "tragically question their own self-worth and their rightful place in a society that fails to recognize their basic human dignity."[14]

ARGUMENT

I. FAMILIES HEADED BY SAME-SEX PARENTS DESERVE NO LESS PROTECTION THAN OTHER FAMILIES DESERVE

Tomorrow, I could marry a stranger, divorce him in 72 days like Kim Kardashian, and get married five more times after that, like both my straight grandmother and straight grandfather did. Yet my moms, who promised each other their forevers two decades ago, who have raised three children and built their lives together, who embody the sanctity of a lifelong commitment every day – they cannot get married.

Kinsey Morrison, 18 years old, Kentucky.[15]

Families are not all the same. They differ in size, cultural heritage, religion, and economic means. Some are headed by parents who planned, were prepared for, and wanted children – others are not. Some children, regardless of their parents' sexual orientation, come from single-parent, divorced, or blended families. And some children have LGBT parents living in committed and

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14. Anthony Michael Kreis, *Is Marriage Equality Inevitable*, HUFFPOST GAY VOICES, Sept. 13, 2012, 6:22PM, at 1, http://www.huffingtonpost.com/anthony-michael-kreis/is-marriage-equality-inev_b_1876010.html (last visited Mar. 4, 2015).

15. Kinsey Morrison, Op-Ed, *supra* note 2.

loving same-sex relationships. Only for same-sex-parented families, however, have Kentucky, Michigan, Ohio, and Tennessee amended their state constitutions to target these parents and bar them from marriage.

Four years ago, an engineering student from the University of Iowa helped change the conversation about marriage and same-sex parenting in this country when he told the Iowa House of Representatives about himself, his younger sister, and their two mothers. Zach Wahls, then 19 years old, described classroom discussions about marriage for same-sex couples:

> The question always comes down to, well, "Can gays even raise kids?" The conversation gets quiet for a moment because most people don't really have any answer.
>
> And then I raise my hand and say, "Actually, I was raised by a gay couple, and I'm doing pretty well." ... If I was your son, Mr. Chairman, I believe I'd make you very proud.[16]

Video of Zach's testimony went viral, prompting many who saw it to confront internal preconceptions about what children raised by a same-sex couple would look like.

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16. *Hearing on HJR 6 Before the Iowa House of Representatives* (Jan. 31, 2011) (statement of Zach Wahls), *available at* http://www.familyequality.org/equal_family_blog/2011/02/04/1001/abc_news_son_of_iowa_lesbians_fights_gay_marriage_ban (last visited Mar. 4, 2015) ("Zach Wahls").

Though some legislators and voters may continue to be motivated by a belief that same-sex parents are inherently incapable of raising healthy and happy children, that notion has been discredited as a serious argument in favor of marriage restrictions. The Sixth Circuit acknowledged that "gay couples, no less than straight couples, are capable of raising children and providing stable families for them." Op. at 20.

There is no shortage of testimony from children raised by same-sex parents demonstrating this truth. Amicus Kinsey Morrison, now a freshman at Stanford, writes:

> When I was born, my moms set out to be good parents, and to give their children both roots and wings. The proof they succeeded isn't that I got into my dream college, but how excited I am to come home.[17]

According to Lea Mitchell, who was raised by two moms in Michigan, the similarities between her family and those of her friends with straight parents far outweighed the differences:

> I got in trouble for leaving my dishes in the sink and tracking mud through the house. I had a curfew and was not allowed to have my boyfriend in my bedroom. I spent most afternoons at dance class and came home and had dinner with my family.
>
> I really liked having friends over and exposing them to our 'different' family. I could see light

17. Kinsey Morrison, Op-Ed, *supra* note 2.

> bulbs turning on in their heads as they realized we were really just like any other family.[18]

Lily Alberts, a 23-year-old raised in Tennessee, explains that her mothers were "no different from any other couple or parenting team":

> Just like any other kid, I had one parent who read me stories and tucked me in, and one who held my hand while we walked the dog. I had one parent who drove me to school, and one who made me brush my teeth.[19]

Will Miller, a 28-year-old Mississippian whose mothers have been together for 23 years said that he never "underst[ood] what all the fuss was about":

> They loved me, and that was all that mattered. It's all that should matter. Indeed, my childhood as the son of lesbian parents was extraordinary in that it was simply ordinary.[20]

Christina Bowers, born and raised in Michigan, recalls how the addition of a second mother to her family impacted her:

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18. Statement from Lea Mitchell to Family Equality Council (Mar. 26, 2014).

19. Statement from Lily Alberts to Family Equality Council (Jun. 10, 2014).

20. Statement from Will Miller to Family Equality Council (Jul. 3, 2014).

> When I was too young to remember, my mother came out as a lesbian. She was a single parent who struggled the same way many single mothers often do. When I was 14 years old, my other mom came into our lives, completing our family. At this critical juncture of my life, I finally had two role models that would support me.
>
> Throughout high school, I went to classes, participated in choir and theatre, had a curfew, and met my high school sweetheart who would become my husband.[21]

Many children raised by same-sex couples point out that their parents modeled positive and committed relationships. As Ella Robinson, now 33, said of the relationship between her father, Episcopal Bishop Gene Robinson, and his partner:

> Their relationship, which started when I was 7 years old, was such an important example of what a loving, committed relationship should look like that I never thought to question it. I never knew to be embarrassed if someone looked at our family differently, or to worry if my friend coming to my Dad's with me for the weekend would be uncomfortable. I just knew we'd have fun, watch the Golden Girls and play some board games (competitively).[22]

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21. Statement from Christina Bowers to Family Equality Council (Mar. 5, 2014).

22. Ella Robinson, *How and Why I Am Outspoken*, Family Equality Council Family Room Blog (Jun. 19, 2012), http://www.

Brian Arsenault, a young man from Maine, wrote that his mothers "have shown [him] and the world what a lasting, loving relationship can look like":

> And when I think of my own wedding someday, should I be lucky enough to find a girl I want to spend the rest of my life with, I can't imagine two better role models to base a family around than my moms.[23]

The positive experiences that children of same-sex parents have relayed to the organizational amici are consistent with decades of social science findings: children of same-sex parents and children of different-sex parents fare equally well academically, psychologically, and socially.[24] All of the leading national child welfare and

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familyequality.org/equal_family_blog/2012/06/19/1292/how_and_why_i_am_outspoken (last visited Mar. 4, 2015).

23. Brian Arsenault, Op-Ed, *Maine Voices: Young man's wish for his moms on Mother's Day: the right to marry. Families come in different shapes and sizes, but what matters is the love they show each other*, PORTLAND PRESS HERALD, May 11, 2012, *available at* http://www.pressherald.com/opinion/young-mans-wish-for-his-moms-on-mothers-day-the-right-to-marry_2012-05-11.html (last visited Mar. 4, 2015).

24. *See, e.g.*, Michael E. Lamb, *Mothers, Fathers, Families, and Circumstances: Factors Affecting Children's Adjustment*, APPLIED DEVELOPMENTAL SCIENCE, 16:2, 98-111, 104 (2012) ("[N]umerous studies of children and adolescents raised by same-sex parents conducted over the past 25 years by respected researchers and published in peer-reviewed academic journals conclude that they are as successful psychologically, emotionally, and socially as children and adolescents raised by heterosexual parents."); Stephen Erich, Patrick Leung and Peter Kindle, *A*

social service organizations agree that lesbian, gay, and bisexual parents do just as well as heterosexual parents at raising happy, healthy, and well-adjusted children.[25] There is no serious dispute on this issue among social scientists and mental health professionals.[26]

Comparative Analysis of Adoptive Family Functioning with Gay, Lesbian, and Heterosexual Parents and Their Children, JOURNAL OF GLBT FAMILY STUDIES, 1:43-60 (2005); Jennifer L. Wainright, Stephen T. Russell and Charlotte J. Patterson, *Psychosocial Adjustment, School Outcomes, and Romantic Relationships of Adolescents with Same-Sex Parents*, CHILD DEVELOPMENT, 75:1886-1898 (2004).

25. American Academy of Child and Adolescent Psychiatry, *Gay, Lesbian, Bisexual, or Transgender Parents Policy Statement* (revised and approved 2009), http://www.aacap.org/cs/root/ policy_statements/gay_lesbian_transgender_and_bisexual_parents_policy_statement (last visited Mar. 4, 2015); American Academy of Pediatrics, *Policy Statement: Coparent or Second Parent Adoption by Same Sex Couples*, PEDIATRICS, 109(2):339–340 (2002), reaffirmed May 2009; American Psychiatric Association, *Position Statement on Adoption and Co-parenting of Children by Same-sex Couples* (2002), http://www.psychiatry.org/advocacy--newsroom/position-statements (last visited Mar. 4, 2015); American Psychological Association, *Sexual Orientation, Parents, & Children* (2004), http://www.apa.org/about/policy/parenting.aspx (last visited Mar. 4, 2015); Child Welfare League of America, *Position Statement on Parenting of Children by Lesbian, Gay, and Bisexual Adults*, http://www.cwla.org/position-statement-on-parenting-of-children-by-lesbian-gay-and-bisexual-adults/ (last visited Mar. 4, 2015); SOCIAL WORK SPEAKS: NATIONAL ASSOCIATION OF SOCIAL WORKERS POLICY STATEMENTS, 2003-2006, 146-150, (position statement available at http://www.naswdc.org/diversity/lgb/062804.asp (last visited Mar. 4, 2015)).

26. Purportedly conflicting evidence is based on studies that failed to control for family instability, household disruption, parental divorce, and other factors unrelated to parents' sexual

But this is not to say that same-sex parents have "earned" the right to marriage through exemplary behavior. Anna Frackman, a Harvard Medical School student, rejects the notion that her success proves that her parents deserved to marry:

> I have both worked very hard and been very lucky to achieve what I have in my life, and I am grateful most of all to my parents for this, but my success is not a reason why my parents or any other gay couple should be able to have their families recognized by the law.
>
> They would be no less deserving if I had dropped out of high school or fallen victim to substance abuse or found myself in otherwise less than ideal circumstances. Our families should be recognized simply because we are humans with the same rights as everyone else. We are families, and treatment of us as anything else is discrimination.[27]

The point is not that families headed by same-sex parents are perfect. As Zach Wahls said in describing the ways in which his family "really isn't so different from any other Iowa family": "We have our hard times too, we get in fights."[28] The point is that these families deserve to be treated equally under the law.

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orientation. *See, e.g.*, Brief of the Am. Psychol. Ass'n, et al., *Bostic v. Schaefer* (4th Cir. Case No. 14-1167), Doc. 147-1 (filed Apr. 19, 2014), at 15-16, nn. 34, 35.

27. Statement from Anna Frackman to Family Equality Council (Jul. 23, 2014).

28. Zach Wahls, *supra* note 16.

Nor do amici mean to suggest that children raised by same-sex parents speak with a single voice. The Court may hear from individuals who were raised by same-sex parents and who oppose marriage for same-sex couples, perhaps because they believe they would have been better off being raised by a married, biological mother and father.

For example, in an open letter to Justice Anthony Kennedy, Katy Faust, the "adult child of a loving gay parent," writes that although her mother was "an exceptional parent," Ms. Faust opposes marriage for same-sex couples. She explains that her biological parents' divorce was "the most traumatic event in [her] thirty-eight years of life" and urges the Court to protect other children from being separated from one of their biological parents.[29]

Amici respectfully observe, however, that marriage for same-sex couples played no part in Ms. Faust's experiences. Her biological parents' divorce, however painful, was not caused by the availability of marriage for her mother and her mother's future partner. Indeed, marriage was not an option for them. One or both biological parents may be missing from a child's life for many different reasons. Neither barring same-sex couples from marriage nor allowing them to marry can change this.

Under Ms. Faust's rationale, only families headed by a biological mother and father are worthy of recognition. By logical extension, infertile couples or couples who plan

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29. Katy Faust, "Dear Justice Kennedy: An Open Letter from the Child of a Loving Gay Parent," *available at* http://www.thepublicdiscourse.com/2015/02/14370/ (Feb. 2, 2015).

to adopt children should also be denied the right to marry. Her assertions boil down to the same argument that has been advanced by proponents of marriage restrictions – and rejected by courts – in case after case. The fact that Ms. Faust happens to have a gay parent does not make this argument any less flawed.

Allowing same-sex couples to marry has no impact on either the ability or the willingness of different-sex couples to marry, stay married, and raise their biological children together.[30] And if children are better off in families in which the parents are married, they are better off whether their parents are biologically related to them or adoptive. As the Sixth Circuit recognized, the quality of family "relationships, and the capacity to raise children within them, turns not on sexual orientation but on individual choices and individual commitment." Op. at 20.

Fifteen-year-old Kentuckian J.M. put it this way:

> Over the years, there have been several occasions when it felt strange not to have a dad, but I have friends who have dads who are not part of their lives, and friends who have had a dad or mom die. In the end, I realize what counts is having two parents who love and support you.[31]

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30. *See, e.g.*, *Kitchen v. Herbert*, 755 F.3d 1193, 1223 (10th Cir. 2014); *Bostic v. Schaefer*, 760 F.3d 352, 383-384 (4th Cir. 2014); *Baskin*, 766 F.3d at 668; *Latta v. Otter*, 771 F.3d 456, 469-470 (9th Cir. 2014).

31. Statement from J.M. to Family Equality Council (Feb. 19, 2015).

Lea Mitchell, a 29-year-old from Michigan explains: "I don't look back and wish I was raised in a household with straight parents – I wish my Mom and Stepmom could finally have validation of their love."[32]

II. THE AVAILABILITY OF MARRIAGE FOR SAME-SEX COUPLES HAS BENEFITTED TENS OF THOUSANDS OF CHILDREN IN THE UNITED STATES, AND HAS HARMED NO ONE

Marriage first became available for same-sex couples in Massachusetts in 2004. More than ten years later, 71% of Americans live in a state that allows same-sex couples to marry.[33] Respondents offer no evidence that the availability of marriage for same-sex couples has harmed any different-sex couple or any child. Instead, *Windsor* and subsequent marriage decisions have only served to strengthen, protect, and validate families headed by same-sex parents.

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32. Lea Mitchell, *supra* note 18.

33. U.S. Census Bureau, Population Division, *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2014 (NST-EST2014-01)*, (Dec. 2014), *available at* http://www.census.gov/popest/data/national/totals/2014/index.html; based on marriage availability in Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, D.C., Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

Twelve-year-old G.O. lives in a state where same-sex couples are no longer excluded from marriage, and he is excited about the wedding his mothers are planning. But he wishes they could have married sooner:

> They would have done it many years ago and taken advantage of all the benefits that married people typically get. Not to mention all the fights and arguments that they constantly have to go through with the medical offices explaining why they should have access to each other's medical records or to their kid's medical information.[34]

In addition to the many tangible and practical benefits marriage confers on the children of same-sex couples, marital recognition can also bring powerful emotional and psychological benefits. As 12-year-old T.M. of Kentucky put it, "I already know my sisters, my moms, and I are a family. But having the government recognize it would validate my family to other people."[35]

A 10-year-old from Chicago told Family Equality Council: "When my parents were married I was happy because we were now an equal family."[36] Jenny Rain, who is 44 years old, explains that the satisfaction of watching

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34. Statement from G.O. to Family Equality Council (Feb. 19, 2015).

35. Statement from T.M. to Family Equality Council (Feb. 18, 2015).

36. Statement from A.S.-V. to Family Equality Council (Feb. 19, 2015).

parents marry is not limited to younger children. Her fathers were together for 36 years before they finally married last year:

> You don't think that a simple piece of paper designating your parents as "married" can have a tangible difference on the bond you have with them – but it does. I watched decades of marginalization of my family fall away in the moment that the judge pronounced them as husband and husband.[37]

Nineteen-year-old Rianna Johnson-Levy, who was born and raised in Ann Arbor, Michigan, describes what it meant for her to watch her mothers marry in Washington, D.C.:

> I have always believed that what bonds my parents together, after 30 years, is the pride they have for the family and the life they have created. To be able to sign the certificate, to be able to use the words, marriage, wife, and spouse, and to be able to leave a hotel in the morning, knowing you were on the way to a wedding, was the most natural and logical progression I could have imagined.[38]

Twelve-year-old C.G. from Tennessee, whose mothers married in Illinois, said:

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37. Statement of Jenny Rain to Family Equality Council (Feb. 13, 2015).

38. Statement from Rianna Johnson-Levy to Family Equality Council (Feb. 20, 2015).

> I'm happy that my parents got married because they were meant for each other and they love each other. This completes our family, and there's nothing better.[39]

Because Texas would not permit 18-year-old Baltazar Martinez' two dads to marry, they traveled to California:

> They had been together for so many years before they even met me and adopted me. Once they got married, they were even happier together. ... And I got to be their best man at their wedding and that was probably the best moment in my life.[40]

But for Baltazar, Rianna, C.G., and many other children living in states that refuse to recognize their parents' out-of-state marriage, the joy of the ceremony is followed by the frustration of returning to a day-to-day life with parents who are not considered married by the states in which they live. Nineteen-year-old Payton McGriff described it this way:

> As amazing as the wedding was, it was still bittersweet. We were hesitant to celebrate too much because we knew that the marriage would not be recognized in our home state of Idaho. It is just baffling to me that people fight so hard

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39. Statement from C.G. to Family Equality Council (Jun. 13, 2014).

40. Statement from Baltazar Martinez to Family Equality Council (Jul. 3, 2014).

to deny something that brought our family so much joy.[41]

While Idaho has finally recognized that Payton's fathers are legally married, Baltazar, Riana, C.G., and thousands of other children are still waiting.

III. EXCLUSION FROM MARRIAGE STIGMATIZES AND DE-LEGITIMIZES SAME-SEX-PARENTED FAMILIES AND DEPRIVES THEM OF THE EQUAL PROTECTION OF THE LAW

I remember the day [Michigan's ballot initiative excluding same-sex couples from marriage] was passed. I was in fourth grade and I remember not speaking the entire day. There was something so hurtful to me, as a young child, to watch the family I had been lovingly and intentionally born into, put up to vote.

Rianna Johnson-Levy, 19 years old, raised by two mothers in Michigan.[42]

According to the Sixth Circuit, marriage exists to "encourag[e couples] to create and maintain stable relationships within which children may flourish." Op. at 20. The unavailability of marriage for same-sex couples in Kentucky, Michigan, Ohio, and Tennessee has precisely the opposite effect.

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41. Statement from Payton McGriff to Family Equality Council (Jul. 21, 2014).

42. Rianna Johnson-Levy, *supra* note 38.

A. The Sixth Circuit Marriage Laws Impose Significant Emotional Costs on the Children of Same-Sex Couples

Placing an official stamp of governmental opprobrium on the relationships of same-sex parents stigmatizes and de-legitimizes these relationships and, as a result, the children themselves. The major challenge most same-sex-parented families must surmount is nothing inherent in their family structure, but rather the societal and governmental disapproval that the challenged state laws represent and perpetuate.

Two years ago, this Court recognized that the federal government's refusal to acknowledge marriages of same-sex couples "humiliate[d] tens of thousands of children now being raised by same-sex couples" and "ma[de] it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives." *Windsor*, 133 S.Ct. at 2694.

This is true today of the marriage restrictions in Kentucky, Michigan, Ohio, and Tennessee, which "instruct[] all [state] officials, and indeed all persons with whom same-sex couples interact, including their own children, that their [relationship] is less worthy than the [relationships] of others." *Id.* at 2696. The accounts of children raised by same-sex couples bear this out.

Rianna Johnson-Levy describes the emotional impact of Michigan's refusal to recognize her mothers' marriage:

> It is exhausting. The rejection I feel is a pain that sits with me, the only negative part of having two mothers that I have ever experienced.[43]

Before marriage became available for same-sex couples in her state, Payton McGriff told Family Equality Council:

> [T]he only difficult part about my father's relationship is the fact that I, as his child, have to watch as society continually tries to deny our family the right to be recognized as one. By denying marriage equality in the state of Idaho, society is sending a message to the children of LGBT parents that their family is not 'normal,' when we feel no different.[44]

J.B., a 14-year-old living with her two moms in Florida, echoed this experience: "The fact that my parents can't get married makes me feel that everyone isn't equal. Like my moms are not as good as other people's parents."[45] Fifteen-year-old S.K.-J. from Indiana had trouble accepting that her mothers were "considered two single people even though they have been in a committed relationship for over 25 years."[46]

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43. Rianna Johnson-Levy, *supra* note 38.

44. Payton McGriff, *supra* note 41.

45. Statement from J.B. to Family Equality Council (Sept. 7, 2014), prior to lifting of marriage ban for same-sex couples in Florida.

46. Statement from S.K.-J. to Family Equality Council (Jul. 4, 2014), prior to lifting of marriage ban for same-sex couples in Indiana.

Eleven-year-old R.G. and his younger sister were adopted by their dads, who met each other 25 years ago in Tennessee and are now raising their family in Ohio. R.G. told amici: "My only dream is for my parents to get married someday, and I pray for that every night."[47]

These feelings of stigmatization, inferiority, and de-legitimization are common themes heard by the organizational amici who work every day with children raised by same-sex parents. As the former program director of amicus COLAGE has testified, many children with whom she has worked have had their peers "question[] the validity of their families because their parents aren't able to get married."[48] This, in turn, can lead to children's insecurity about their parents' relationship, including the fear that "somebody is going to come and break up their family."[49]

Psychologist Judith Glassgold explained that the feeling that their parents' relationship is deemed "inherently different and potentially inferior to heterosexual relationships," and that their parents are "inherently less deserving than heterosexual couples of society's

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47. Statement from R.G. to Family Equality Council (May 6, 2014).

48. *Transcript of Hearing on Civil Union Act Before N.J. Civil Union Review Comm'n* at 38 (April 16, 2008) (statement of Meredith Fenton), *available at* http://www.nj.gov/oag /dcr/downloads/Transcript%20CURC-and-Public-Hearing-04162008.pdf.

49. *Id.*

full recognition," psychologically burdens the children of same-sex parents.[50]

Many children of same-sex parents also feel "cheated" by marriage inequality.[51] In the words of 18-year-old Maggie Franks:

> My moms have been together for 22 years, and I could not have asked for better, more supportive parents. [The inability to legally marry] essentially sentence[s] my parents' relationship to second class status, not only making our family feel less worthy than others, but denying us rights that are enjoyed by other families headed by straight parents.[52]

A 10-year-old told New Jersey legislators that the absence of marriage as an option for his parents led him to question the legitimacy of his family: "It doesn't bother me to tell kids my parents are gay. It *does* bother me to say they aren't married. It makes me feel that our family is less than a family."[53]

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50. *Transcript of Hearing on Civil Union Act Before N.J. Civil Union Review Comm'n* at 45 (April 16, 2008) (statement of Dr. Judith Glassgold), *available at* http://www.nj.gov/oag/dcr/downloads/Transcript%20CURC-and-Public-Hearing-04162008.pdf.

51. Statement from Ella Robinson to Family Equality Council (Jan. 29, 2013).

52. Statement from Maggie Franks to Family Equality Council (Feb. 3, 2013).

53. Sarah Wildman, *Children Speak for Same-Sex Marriage*, N.Y. Times, Jan. 20, 2010, at E0, *available at* http://www.nytimes.com/2010/01/21/fashion/21kids.html?pagewanted=all&_r=0,

To one young woman whose mothers have been together for thirty years, efforts to limit full recognition of marriage to different-sex couples "felt like a slap in the face":[54]

> How could the free society that raised me and taught me everything that I know, now deny me my other foundation, a family that is recognized and protected as such? It felt like a slap in the face from my country. I had never asked for validation, but blatant exclusion hurts.[55]

Similarly, Lily Alberts told amici:

> I was 14 years old when Tennessee enacted its Marriage Protection Amendment, and I remember thinking that families like mine, with two moms, were formally unrecognizable by the state, were lesser than other families. And Tennessee has never recognized my family.[56]

Rianna Johnson-Levy felt the same way when Michigan amended its constitution to exclude couples like her parents from marriage: "I lost a little faith in Michigan that day, a state I truly love and feel at home in, but do not plan to live in for a long period of time."[57]

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published prior to lifting of marriage ban for same-sex couples in New Jersey.

54. Statement from Tsipora Prochovnick to Family Equality Council (Feb. 5, 2013).

55. *Id.*

56. Lily Alberts, *supra* note 19.

57. Rianna Johnson-Levy, *supra* note 38.

B. The Sixth Circuit Marriage Laws Deprive Children with Same-Sex Parents of Critical Legal Protections

In addition to stigmatizing families, the exclusion of same-sex couples from marriage harms their children in more tangible ways. Marital status affects many aspects of a family's economic life, from insurance benefits to educational financial aid, and the unavailability of marriage for same-sex couples can mean added financial strain. Worse, for the children of same-sex couples, the state's refusal to recognize marriage can mean living without a legal relationship to one parent.

Since *Windsor*, the federal government no longer discriminates against married same-sex couples for purposes of most federal benefits. Couples living in Kentucky, Michigan, Ohio, and Tennessee with the economic means and physical ability can marry by traveling to one of the states that does not exclude same-sex couples from marriage. Upon returning to their home state, however, they face a web of complications.

Legally married same-sex couples may learn, for example, that certain federal benefits, including critical Social Security and Veterans' benefits, are unavailable to them because their home states do not recognize their marriages.[58] They will be required to file their federal taxes as "married," which requires first calculating state taxes as a married couple, then re-calculating as single

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58. Memorandum from the Attorney General to the President, "Implementation of *United States v. Windsor*," 8-9, 13 (June 20, 2014), *available at* http://www.justice.gov/iso/opa/resources/9722014620103930904785.pdf.

individuals. They will be denied all state benefits to which the different-sex married couple living next door is entitled.

Amicus Kinsey Morrison notes that her mothers had to pay far more for health care because the family could not be covered by a single insurance plan. Having two mothers also meant multiple rounds of the college financial aid application process, an intensely stressful experience since financial assistance dictated whether or not Kinsey could attend Stanford.[59]

The unavailability of marriage also means that it can be difficult or impossible for both parents in a same-sex couple to create legal relationships with their own children. Most kids of same-sex couples living in Kentucky, Michigan, Ohio, and Tennessee have one legal parent and one parent who is considered a "legal stranger" under state law.

This is in stark contrast to how states in the Sixth Circuit treat different-sex couples. A husband becomes the presumptive "father" of any children his wife bears, regardless of any biological tie.[60] And unmarried different-sex couples may establish a presumptive legal relationship between the male partner and the female partner's child simply by completing and notarizing a form.[61]

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59. Statement from Kinsey Morrison to Family Equality Council (Feb. 27, 2015).

60. *See* Ken. Rev. Stats § 406.011; Mich. Comp. Laws § 722.1433; Ohio Rev. Code § 3111.03(A)(1); Tenn. Code Ann. § 36-2-304(a)(1).

61. *See* Ken. Rev. Stats § 406.025; Mich. Comp. Laws § 722.1003; Ohio Rev. Code § 3111.23; Tenn. Code Ann. § 36-2-318.

For a real-life example of what the lack of a legally recognized parental relationship can mean for the children of same-sex couples, the Court need look no further than Petitioners April DeBoer and Jayne Royse. As the Sixth Circuit observed, "[m]arriage was not their first objective" in challenging Michigan's laws. Op. at 9. What they really wanted was for both of them to be able to legally adopt the three children they are raising together, two of whom have "special needs." Op. at 46-47 (Daughtrey, J., dissenting). Because Michigan does not permit unmarried couples to either jointly adopt or adopt each other's children (a second-parent adoption), the children have only one legal parent. The other is considered a legal stranger with no parental rights.

"[S]hould anything happen to that adoptive parent, there is no provision in Michigan's legal framework that would 'ensure that the children would necessarily remain with the surviving non-legal parent.'" *Id.* at 48 (quoting trial court testimony). It is hard to imagine a regime more at odds with "creat[ing] and maintain[ing] stable relationships within which children may flourish." Op. at 20.

The absence of a legal relationship between parent and child often becomes critical in situations that are already stressful or traumatic for families, including medical emergencies and the death of a parent. Like many children of same-sex parents living in states where marriage is unavailable, Anna Frackman was aware that "if one of us needed to be in the hospital, we were not even guaranteed the right to be with our loved ones while they were scared

and in pain."[62] Amicus Kinsey Morrison recounts that when she was just a week old, an allergic reaction to a vaccine put her life in jeopardy. Only one of her mothers – the one with a biological relationship – was permitted to see her. Her other mother had to wait in the hall.[63]

M.Q.B., a 14-year-old Iowan, explained that home-state marriage did not entirely solve the problem for her family. Though Iowa and other states recognize her mothers' marriage, she says, "that still leaves a large part of the country where they don't have the legal protection of marriage."

> I like traveling, and one of my moms has a blood clotting disorder, and if she had a problem while we were traveling, my other mom wouldn't be able to speak for her or direct her care as would someone who was legally married. That makes me nervous because I know that she would be the best one to speak on her behalf.[64]

The story of Oklahoman Jamie Doepel is a chilling example of what the practical impact of marriage inequality can look like. Jamie describes how her mother

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62. Anna Frackman, Op-Ed, *Anna Frackman: Wisconsin Should Treat All Families Equally*, Wisconsin State Journal (Feb. 23, 2014), *available at* http://host.madison.com/news/opinion/column/guest/anna-frackman-wisconsin-should-treat-all-families-equally/article_3e43db10-ffeb-5a46-8090-f3ce708d4aad.html, published prior to lifting of Wisconsin's ban on marriage for same-sex couples.

63. Kinsey Morrison, *supra* note 59.

64. Statement from M.Q.B. to Family Equality Council (Feb. 1, 2013).

and her mother's partner, Elaine, "saw Jamie through high school and raised [her] like any other family raised their children."[65]

But after moving in temporarily with an ailing family member to provide nursing care, Elaine died suddenly. Jamie's mother was not notified. Instead, she learned of Elaine's death when she went to inquire about the electricity in their house having been turned off and was told the account had been closed because Elaine (the account holder) was dead:

> While standing at the [utility company] payment window, my mom found out that her life partner, other mother to her children, had died.[66]

This devastating emotional blow was followed by economic hardship, as Jamie's mother "struggled to pay for the house bills by herself and within six months lost the house." "Needless to say," Jamie adds, "we never received any death benefits. We never received any support from the state of Oklahoma in any fashion."[67] For children with same-sex parents in Kentucky, Michigan, Ohio, and Tennessee, this could still happen today.

By denying marriage to their parents, the Sixth Circuit marriage restrictions harm the children of same-

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65. Statement from Jamie Doepel to Family Equality Council (Feb. 4, 2014), prior to lifting of Oklahoma's ban on marriage for same-sex couples.

66. *Id.*

67. *Id.*

sex couples, depriving them of tangible governmental protections, alienating them from their communities, and creating insecurity among them about their families.

IV. EXCLUSION FROM MARRIAGE INFORMS LGBT YOUTH THAT THEIR GOVERNMENT CONSIDERS THEM, AND ANY COMMITTED RELATIONSHIPS THEY MAY FORM, TO BE INHERENTLY INFERIOR TO THOSE OF THEIR HETEROSEXUAL PEERS

I want the same rights as everybody else. I'm human! I should be treated the same way. ... Marriage is almost like a guarantee that somebody will be there for you when you wake up in the morning, to help you through your darkest hours, this is what a marriage is.

M.R., 15 years old, Michigan.[68]

I don't want to destroy or alter American society and values. I want to take part in them too.

Matthew Pagnotti, then 19 years old, Virginia.[69]

In addition to harming the children of same-sex parents, laws excluding same-sex couples from marriage also harm LGBT youth. These young people's perceptions of their futures are powerfully influenced by what the

68. M.R., *supra* note 3.

69. Kathryn Brightbill, Brian W. Kaufman, Margaret Riley, and Nick Vargo, LGBT Youth/Young Adult Survey, EMORY CHILD RIGHTS PROJECT (on file with Family Equality Council) (compiled Jan. 29, 2013) ("Child Rights Project Survey").

government tells them about the validity of the committed relationships they hope to form throughout their lives. By officially sanctioning their exclusion from marriage, the state laws exacerbate feelings of hopelessness about the future and perpetual "different-ness" that many LGBT youth already feel, discouraging them from aspiring to full participation in civic life.

Limiting marriage to heterosexual couples undermines the self-worth of LGBT youth and impinges their development in relation to their peers. As Gabriella do Amaral told the Maine Legislature's Judiciary Committee:

> My love is equal and it should be acknowledged equally. When it isn't, it impacts how I feel as a member of society: unequal.
>
> When young people like me are constantly told that we don't have the same rights as other people it's hard to sense belonging. ... It's frustrating knowing that I won't have the same opportunities as my peers simply because I'm a lesbian.[70]

Eric Wilson, who grew up in Texas, recalls how the passage of his home state's constitutional amendment banning marriage for same-sex couples affected him:

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70. *An Act To End Discrimination in Civil Marriage and Affirm Religious Freedom: Hearing on LD 1020 Before Me. Joint Comm. on the Judiciary* (April 22, 2009) (statement of Gabriella do Amaral). The marriage ban for same-sex couples in Maine was lifted by popular vote in 2012.

> I generally try to see the best in people, and while growing up in Conroe, Texas was perhaps not the ideal environment for a gay adolescent such as myself, I still got the impression that my neighbors, classmates and the community at large were generally decent and caring people. But in the wake of this vote I'd be lying if I didn't say that I began to question this assumption.
>
> To me it felt like 86% of the voters in the county in which I lived hated me and thought I was disgusting and not worthy of the legal protections afforded to people in opposite-sex relationships. It's not a feeling I'd wish on my worst enemy, and that's certainly not a feeling that any newly out young adult should ever have to feel again going forward.[71]

Eric is not alone in his feeling of isolation from his community. Ricky Hill's experience in Oklahoma was similar:

> I knew in middle school that I was gay, but I didn't dare tell anyone, because I heard terms like "fag" and "dyke" thrown around on a daily basis. In never heard anything positive or affirming about my identity, instead I was told that gay people were immoral, unnatural, and evil.[72]

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71. Statement from Eric Wilson to Family Equality Council (Jul. 23, 2014).

72. Statement from Ricky Hill to Family Equality Council (Feb. 10, 2014).

Amicus Kinsey Morrison points out that for both kids being raised by same-sex parents and for LGBT youth, laws excluding same-sex couples from marriage make anti-bullying campaigns ring hollow. But the converse is also true: "It can be incredibly valuable for kids to know the law is on their side."[73]

LGBT youth in Kentucky, Michigan, Ohio, and Tennessee suffer from state-sanctioned disapproval of the very relationships that for their heterosexual peers may culminate in the "foundational institution" that is "a basic building block of our society."[74]

"Like many other Americans," wrote Matthew Pagnotti, "I dream of finding the love of my life and raising a family with them, passing on many of the values that my parents taught me when I was young."[75]

A young man from Puerto Rico describes how painful it is to be unable to aspire to marriage and building a family deemed worthy of protection:

> Knowing that I cannot expect to live life at its fullest is a devastating reality. When I meet someone and begin a relationship, I already know from the start that my love story will not and cannot be the same as the one my heterosexual friends will live.[76]

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73. Kinsey Morrison, *supra* note 59.

74. Brief for Michigan Defendants-Appellants, *DeBoer v. Snyder*, *supra* note 12, at 54.

75. Child Rights Project Survey, *supra* note 69.

76. Statement from Ricardo Benitez Bajandas to The University of Puerto Rico School of Law - Clinic On Sexual

As one young woman wrote in the context of New Jersey's marriage equality initiative, "[i]t is a dream for many young people to grow up, marry the person they love, and perhaps raise children with that person." As was the case in New Jersey in 2012, "that dream cannot be fulfilled in today's" Kentucky, Michigan, Ohio, and Tennessee "if the person you love is of the same gender as you":

> For many LGBT youth, the worry that they cannot live a fulfilling, happy life is one that causes much despair. By refusing young people the opportunity to commit themselves to someone with whom they want to share the rest of their life, [the state] only encourage[s] that fear and despair.[77]

LGBT youth are damaged not only by the exclusion itself but also because the exclusion is sanctioned by the state. Young people, both within and outside the Sixth Circuit states, expect more from their government. In the words of one youth, "My expectation is that while the rest of my community may disengage me because of my orientation, my government would not."[78]

Orientation And Gender Identity Discrimination (Dec. 4, 2014) (on file with Family Equality Council).

77. Isabella Levy, *Why marriage matters to the youth*, Garden State Equality (Feb. 12, 2012), http://www.gardenstateequality.org/2012/02/why-marriage-matters-to-the-youth/ (last visited Mar. 4, 2015).

78. Child Rights Project Survey, *supra* note 69.

The laws at issue hold out marriage as "'the foundation of the family and of society,'"[79] and then inform LGBT youth that they are unworthy of participating in the institution. These laws tell these young people that family is "'essential to social and economic order and the common good,'"[80] but also that the families LGBT youth may later form will not count.

Marginalizing young people within their communities, alienating them from society, and discouraging them from fully participating in adult life is not consistent with any of the interests Respondents have urged in favor of excluding same-sex couples from marriage.

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79. Brief for Michigan Defendants-Appellants, *DeBoer v. Snyder*, *supra* note 12, at 50 (*quoting Maynard v. Hill*, 125 U.S. 190, 211 (1888)).

80. Brief of Defendants-Appellants, *Tanco v. Haslem*, *supra* note 13, at 13 (*quoting* Tenn. Code Ann. § 36-3-113(a)).

CONCLUSION

Respondents say that marriage provides a stable family structure for children. If this is true, it is true for all children – not just children being raised by parents of different sexes. And if society benefits when the state encourages adults to form, and raise children within, committed relationships, it suffers when the state tells LGBT youth – the next generation of LGBT parents – that the families they may build are beneath the law's notice.

Based on the interests of LGBT youth and children of same-sex parents, amici urge this Court to reverse the Sixth Circuit's decision in *DeBoer v. Snyder*, *Obergefell v. Hodges*, *Bourke v. Beshear*, and *Tanco v. Haslem*.

Respectfully submitted,

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